



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant December 19, 2022 (the “Application”). The Tenant applied for an order that the Landlord make emergency repairs to the unit.

The Tenant appeared at the hearing with L.P., an occupant. L.P. and children were named on the Application and have been removed because they are not tenants.

The Landlord appeared at the hearing with J.P.L. to assist, as well as others who have acted as agent for the Landlord in relation to this tenancy. The Application has been changed to name the Landlord as landlord rather than the two agents who were originally named as the landlords.

The Landlord’s agents provided the correct rental unit address which is noted on the front page of this decision.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant, L.P., J.P.L. and J.T. provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no substantive issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to an order that the Landlord make emergency repairs to the unit?

Background and Evidence

On the Application, the Tenant stated that the furnace, electricity and gas in the rental unit were an issue. At the hearing, only the furnace and gas remained an issue.

A written tenancy agreement was submitted, and the parties agreed it is accurate, other than in relation to a pet damage deposit which the Tenant testified was paid.

Furnace

The Tenant seeks an order that the furnace in the rental unit be replaced. The Tenant testified that the furnace was not working properly, and nobody would repair it because it is too old. The Tenant testified that their friend is a furnace technician and confirmed the furnace is too old and is unsafe due to carbon monoxide. The Tenant also testified that the furnace is dirty and needs to be cleaned. The Tenant submitted an unsigned typed statement about the furnace saying it is a letter from a professional.

The Landlord's agents testified that the only licensed company who has attended the rental unit and looked at the furnace provided an invoice showing the furnace was fixed and working after their attendance. The Landlord's agents testified that there was a carbon monoxide detector in the rental unit at the start of the tenancy which would detect if there was a carbon monoxide issue. The Landlord's agents denied there is a carbon monoxide issue in the rental unit. The Landlord's agents testified that the furnace and ducts are dirty; however, they sent someone to clean them, and the Tenant had not cleaned or prepared the unit properly to allow them to do their work.

The Landlord submitted an Invoice from a plumbing, heating and air conditioning company showing someone attended the rental unit November 09, 2022, and repaired the furnace such that it was working. The Invoice shows there was no carbon monoxide in the rental unit when the technician was in attendance.

The Tenant acknowledged they were not prepared for the furnace technician to clean the furnace and ducts when they attended the rental unit.

The Landlord and agents agreed to an order being issued that they have someone attend the rental unit and clean the furnace and ducts as long as the Tenant has cleaned and prepared the unit so that the technician can do their work. The Landlord's agents also asked that the dog living in the rental unit not be present during the cleaning. The Landlord's agents thought they could have someone attend the rental unit within two weeks to clean the furnace and ducts.

The Tenant agreed to have the rental unit clean and prepared for someone to attend and clean the furnace and ducts and required three days to do so. The Tenant also agreed to have the dog out of the rental unit during the cleaning.

Gas

The Tenant testified that their gas has been shut off and the Landlord has put the Fortis account in their name such that the Tenant cannot do anything about the gas being shut off. The Tenant acknowledged there is electric heat in the rental unit. The Tenant acknowledged they were responsible for paying for gas from the start of the tenancy. The Tenant testified that they put their Fortis account into their friend's name at the start of the tenancy. The Tenant submitted documentary evidence showing the account was disconnected because the Tenant did not pay their bills.

The Landlord and agents testified that Fortis turned the gas to the rental unit off because the Tenant did not pay their bills. The Landlord and agents testified that the Fortis account has now been put in the Landlord's name. The Landlord and agents testified that they agreed to keep the account in their name and would have the gas reconnected and pay for the gas if the Tenant paid the \$120.00 reconnection fee as well as \$200.00 as a prepayment each month. The Landlord and agents testified that Fortis told them \$200.00 per month in gas was usual for the rental unit. The Landlord and agents testified that they are not convinced the Tenant will pay the gas bill after it has been issued and paid for by the Landlord because the Tenant has already refused to pay their electricity bill which also had to be put into the Landlord's name. The Landlord and agents testified that electricity is sufficient to heat the rental unit and gas is not necessary to heat the rental unit.

In response, the Tenant testified that they paid Fortis \$300.00. The Tenant said they were agreeable to paying the \$120.00 reconnection fee but not to pre-pay the \$200.00 requested because they are not financially able to do so.

Analysis

Section 32 of the *Act* sets out the obligations of landlords and tenants in relation to repairing and maintaining the rental unit.

Section 33 of the *Act* sets out the definition of emergency repairs.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

Furnace

I am not satisfied the furnace needs to be replaced because I do not find the Tenant has submitted compelling evidence of this. The Tenant submitted an unsigned typed statement from a friend about the furnace with no compelling evidence that this person is qualified to give their opinion about the furnace. In contrast, the Landlord submitted an Invoice from a professional showing the furnace was working after their repairs and with no indication the furnace needs to be replaced. Further, the Tenant has not submitted any compelling evidence that there is an issue with carbon monoxide in the rental unit. If the Tenant is concerned about carbon monoxide, the Tenant can purchase a carbon monoxide monitor for the rental unit.

I am satisfied the furnace needs cleaning because the Landlord and agents acknowledged this. Therefore, pursuant to section 62 of the *Act*, **I order the following:**

1. The Landlord is ordered to have someone qualified to clean the furnace and ducts attend the rental unit to clean the furnace and ducts within two weeks of receipt of this decision at their own cost.
2. Once the Landlord has an appointment with someone to attend and clean the furnace and ducts, the Landlord is to provide the Tenant written notice of the date and time of the cleaning. Notice can be sent to the Tenant by email. Notice must be provided to the Tenant at least 24 hours before the appointment.

3. The Tenant is ordered to have the rental unit clean and prepared to allow someone to clean the furnace and ducts prior to the appointment date and time provided in the notice from the Landlord. The Tenant is also ordered to have the dog out of the rental unit during the cleaning appointment.
4. If the furnace technician attends the rental unit on the date and time in the notice provided by the Landlord to the Tenant and is unable to complete the cleaning due to the Tenant not cleaning the rental unit and preparing for the appointment, or not having the dog out of the rental unit, the Landlord is not required to take any further steps to have the furnace or ducts cleaned. Further, the Landlord can recover any cost involved in having the technician attend the rental unit from the Tenant.

I make the above orders because I find the Tenant is not doing their part in getting issues with the rental unit resolved whereas the Landlord and their agents are doing what they can to get the issues resolved.

Gas

I find the Tenant is responsible to obtain and pay for gas in this tenancy because the Tenant acknowledged this, and the written tenancy agreement shows gas is not included in rent.

I do not find the gas issue to be a repair issue. There is nothing wrong with the rental unit that has resulted in the Tenant not having gas. It is clear from the Tenant's own documentary evidence that the Tenant does not have gas because the Tenant did not pay their gas bills. This is an issue between the Tenant and Fortis. The \$300.00 the Tenant paid to Fortis, and what Fortis did with this, is an issue between the Tenant and Fortis. These issues are not between the Tenant and Landlord. The Landlord is not responsible for providing the Tenant gas because the written tenancy agreement shows gas is not included in rent and the Tenant acknowledged they have been responsible for gas from the start of the tenancy. The Landlord has not done anything to result in the gas being disconnected. Nor is the Landlord responsible for ensuring the gas is reconnected and paid for because again, gas in this tenancy has always been the responsibility of the Tenant.

The Landlord has complicated the situation by putting the Fortis gas account in their name. However, this does not change the agreement between the parties, which is that the Tenant is responsible for obtaining and paying for gas. Further, the Landlord offered to have the gas reconnected and to pay for the gas if the Tenant paid the reconnection fee of \$120.00 and pre-paid the Landlord \$200.00 for gas each month. The Tenant has not provided compelling evidence that they agreed to this offer and then followed through with it by paying the Landlord \$320.00. The Landlord again offered this option at the hearing and the Tenant would not agree to pre-pay the \$200.00 because they are not financially able to do so. Therefore, the written tenancy agreement has not been changed and the Tenant is responsible for obtaining and paying for gas during this tenancy.

The Tenant said at the hearing that they do not know what to do about the gas. The Tenant is responsible for dealing with Fortis, obtaining gas and paying for gas, this is not the Landlord's responsibility. The Tenant can go about this however they wish. It may be that the Tenant wishes to come to an agreement with the Landlord about leaving the gas account in the Landlord's name and paying the Landlord in the manner the Landlord has requested. If the parties do agree to change the tenancy agreement as it relates to gas, this should be in writing and signed by both parties and the parties should each keep a copy of this agreement. If the Tenant does not wish to agree to the Landlord's terms, then the Tenant can deal directly with Fortis about obtaining gas and paying for gas as this is what the Tenant has been required to do from the start of the tenancy. The Landlord cannot interfere with the Tenant obtaining and paying for gas for the rental unit; however, the Landlord is also not required to assist with this, other than perhaps in relation to changing the name on the account to the Tenant's name or another name.

The Tenant's request for an order that the Landlord make emergency repairs in that they obtain and pay for the Tenant's gas is dismissed without leave to re-apply.

Conclusion

The orders issued about the furnace are set out in the Decision above.

The Tenant's request for an order that the Landlord make emergency repairs in that they obtain and pay for the Tenant's gas is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 17, 2023

Residential Tenancy Branch